APPENDIX

OPINION AND ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Filed May 24, 1982)

No. 81-3484

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOSEPH E. NORRIS,
Plaintiff-Appellant

v.

THE HONORABLE LEO A. JACKSON, *et al.*,
Defendants-Appellees

ORDER

BEFORE; ENGEL and BROWN, *Circuit Judges;* and HORTON, *District Judge.**

This appeal has been referred to a panel of the Court pursuant to Rule 9(a), Rules of the Sixth Circuit. After examination of the briefs and the record, this panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

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*The Honorable Odell Horton, Judge, U.S. District Court for the Western District of Tennessee, sitting by designation.

Plaintiff-appellant Norris is appealing from the District Court's order dismissing his civil rights case. 42 U.S.C. §1982. Norris sued various courts, judges, and officers of the state of Ohio because a jury verdict in his favor was reversed on appeal. The District Court *sua sponte* dismissed the complaint for failure to state a cause of action. Rule 12(b)6, F.R.Civ.P.

As a preliminary matter, Norris objects that the District Court should have required an answer from the defendants before dismissing the complaint. A court has a duty to decide whether it has jurisdiction to entertain a complaint. See *Liberty Mutual Insurance Co. v. Wetzel*, 424 U.S. 737, 740 (1976). Since the District Court clearly lacked jurisdiction to entertain the complaint, the *sua sponte* dismissal was proper.

Although Norris appealed the state court of appeals decision to the Ohio Supreme Court, he did not file a petition for a writ of certiorari in the United States Supreme Court. In *Buck v. Ohio Court of Appeals*, 554 F.2d 766, 767 (6th Cir. 1977), this Court held that there is no right of appeal from a state supreme court's decision other than to the United States Supreme Court. A federal constitutional attack upon a final state court judgment is permitted only under exceptional circumstances. *Id.* No such exceptional circumstances are present in this case.

Accordingly, it is ORDERED that the District Court's order be affirmed under Rule 9(d)3, Rules of the Sixth Circuit, because the issues are not substantial and do not require oral argument.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN

Clerk

ORDER OF THE UNITED STATES DISTRICT COURT

(Filed July 24, 1982)

Case No. C81-1416

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOSEPH E. NORRIS, SR.,
Plaintiff,

vs.

THE HON. LEO A. JACKSON, *et al.*,
Defendants.

ORDER

Plaintiff Joseph E. Norris, Sr., brings this action, pursuant to 42 U.S.C. §§1981 and 1983, against the Eighth District Court of Appeals of Ohio and its Chief Judge, the Honorable Leo A. Jackson; the Supreme Court of Ohio and its Chief Justice, the Honorable Frank D. Celebrezze; and the Governor of Ohio, James A. Rhodes. Plaintiff alleges various constitutional violations because the Court of Appeals set aside a judgment plaintiff Norris obtained pursuant to a jury trial in the Common Pleas Court of Cuyahoga County, Ohio, on July 11, 1979. On May 15, 1981, the Supreme Court of Ohio denied plaintiff further appellate review.

Upon consideration, this Court *sua sponte* dismisses the Complaint in this case for failure to state a claim upon which relief can be granted.

IT IS SO ORDERED.

/s/ ANN ALDRICH
United States District Judge

STATUTES AND CONSTITUTION INVOLVED
28 U.S.C., Section 1343

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

42 U.S.C., Section 1981

All persons within the jurisdiction of the United States shall have the same right in every State or Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C., Section 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Constitution of the United States

Amendment V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Amendment XIV

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, with due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

COMPLAINT FILED IN THE UNITED STATES DISTRICT COURT

(Filed July 14, 1981)

Case No. C81-1416

IN THE UNITED STATES DISTRICT COURT
NORTHEASTERN DISTRICT OF OHIO
EASTERN DIVISION

JOSEPH E. NORRIS, SR.,
Plaintiff,

vs.

THE HON. LEO A. JACKSON, Chief Justice,
Eighth District Court of Appeals of Ohio,

and

THE EIGHTH DISTRICT COURT OF APPEALS OF OHIO,

and

THE HON. FRANK D. CELEBREZZE, Chief Justice,
Supreme Court of Ohio,

and

THE SUPREME COURT OF OHIO,

and

THE HON. JAMES A. RHODES,
Governor of Ohio,
Defendants.

COMPLAINT

JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to the provisions of Title 28 U.S.C., sec. 1343, this suit

being a suit in equity which is authorized by law in Title 42 U.S.C., sec. 1983 to be brought to redress the deprivation under color of state law, statute, custom or usage of rights and privileges secured by the Constitution and laws of the United States or by any Act of Congress providing for equal rights of United States citizens. The rights here sought to be redressed are rights guaranteed by the Vth, VIIth and XIVth Amendments of the U. S. Constitution and by Title 42, U.S.C. sec. 1981 as hereinafter more fully appears.

2. Plaintiff is a citizen of the United States.

3. Defendant Court of Appeals is a reviewing court created and maintained by the State of Ohio and defendant Supreme Court is a superior court to Court of Appeals created and maintained by the State of Ohio and vested under Ohio law with "superintendence" over the defendant Court of Appeals.

4. Defendant Judge Jackson was at all times relevant hereto the Chief of Justice of the defendant Court of Appeals and defendant Judge Celebrezze was the Chief Justice of the defendant Supreme Court and, as such, said defendants were responsible under Ohio law for the proper administration and supervision of their respective courts and Judge Celebrezze was also responsible for superintendence over the defendant Court of Appeals, in which capacities of administration and supervision these defendants are being sued herein.

5. Defendant Governor Rhodes was at all times relevant hereto the Chief Executive Officer of the State of Ohio and thereby responsible for the proper execution of all laws of the State of Ohio.

FACTS

6. On January 15, 1981, defendant Court of Appeals, exercising judicial power, vacated a judgment which the plaintiff obtained pursuant to a jury trial in the Cuyahoga County Common Pleas Court on July 11, 1979, in the amount of $750,000.00, and proceeded to enter final judgment for the defendants against whom the plaintiff's judgment had been obtained.

7. Said exercise of judicial power was improper and unlawful in that the defendant Court of Appeals: 1. distorted the facts of the case as found by the jury; 2. misstated the cause of action which the plaintiff pursued and ignored the cause of action set forth in the pleadings and instructions to the jury; and 3. entered final judgment for the defendants based upon the factual and legal distortions of the case.

8. Said actions by the defendant Court of Appeals violate the constitutional, statutory, and common-law rules of appellate review in Ohio.

9. Furthermore, had the defendant Court of Appeals reviewed the case in accordance with said rules, the plaintiff's judgment would have been affirmed.

10. On May 15, 1981, defendant Supreme Court issued its order refusing to review the ruling of the defendant Court of Appeals.

11. The administrative and supervisory responsibilities of the defendant Judges and the defendant Governor Rhodes require them to so conduct their courts as to comply with the laws of Ohio and of the United States and/or to provide a method to rectify the improper and unlawful exercise of judicial power.

12. Said individuals did neither in this case; and, as a result, rights of the plaintiff under the U. S. Constitution have been violated under color of State law.

13. Specifically, the plaintiff has been denied his right to a jury trial (since the defendant Court of Appeals altered the facts as found by the jury); his rights to due process of law (since that right would include a lawfully conducted appellate procedure to determine his right to his judgment); and his right to equal protection of the law (since the defendant Court of Appeals refused to permit, after the fact, the plaintiff to pursue and prevail upon a recognized cause of action which should be available to any U. S. Citizen), all contrary to the VIIth, Vth, and XIVth Amendments of the U. S. Constitution and the statutory and case law existing thereunder.

DAMAGES

14. Under Ohio law, plaintiff's judgment earns interest at 6% per annum from the date of its posting.

15. Defendants against whom the judgment was rendered were fully collectable and had filed full security for its payment with the Court.

16. As a result of the defendants' unconstitutional action, the plaintiff has been damaged in the amount of Seven hundred fifty thousand dollars ($750,000.00) plus interest.

Wherefore, plaintiff demands judgment against the defendants in the sum of Seven Hundred Fifty thousand dollars ($750,000.00) plus interest at 6% per annum from July 11, 1979 and costs.

/s/ THOMAS J. DORCHAK
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